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Error to Circuit Court, Alleghany County.

Action by the Craig-Giles Iron Company against W. A. Wickline and others. Verdict and judgment for defendants, and plaintiff brings error. Reversed and remanded for new trial.

M. P. Farrier, of Pearisburg, and *C. P. Jones, Jr.*, and *C. B. Cushing*, both of Covington, for plaintiff in error.

R. B. Stephenson and *Geo. A. Revercomb*, both of Covington, for defendants in error.

BURKS et al. v. COMMONWEALTH.

Nov. 20, 1919.

[101 S. E. 230.]

1. Fish (§ 9*)—Repeal of Statute as to Nets.—Acts 1914, c. 151, p. 252, was intended as a complete substitute for and operated by implication to repeal Act March 7, 1912, c. 92, entitled "An act to prevent the catching of fish by gill nets or seines in the rivers and streams" in Rockbridge county.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 941.]

2. Fish (§ 9*)—Ratification of Local Laws by Supervisors Is Valid.—Though Acts 1914, c. 151, relating to catching of fish by nets in Rockbridge county, contained no emergency clause, and therefore did not take effect until a lapse of 90 days, in view of Const. § 53, the board of supervisors of said county could validly ratify the act before the expiration of the 90 days.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 758.]

3. Statutes (§ 263*)—Retroactive Construction.—As a general proposition until the time arrives for a statute to take effect, all acts purporting to have been done under it are null and void.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 777.]

4. Statutes (§ 135*)—Amendment of Void Act.—A void act cannot be made the subject of a mere amendment.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 758.]

5. Criminal Law (§§ 220, 1031 (1)*—Sufficiency of Warrant Cannot Be Raised for First Time on Appeal.—Though the real subject of prosecution was violation of local law against catching fish with nets in Rockbridge county and the warrants charged defendants with a violation of the fish and game laws, the defect could have been corrected by amendment under Code 1904, § 4107; and, since objections that warrants do not apprise defendants with particular offense intended to be charged could not have been properly sustained after verdict and judgment, even in the trial court, such objections come too late when made for the first time on appeal.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 1257.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Criminal Law (§ 1153 (3)*)—Introduction of Testimony after Opening Address in Discretion of Court.—That, after the attorney for commonwealth had concluded his opening address to the jury, in prosecution for violation of law against fishing with nets in Rockbridge county, the court permitted him to introduce records of the board of supervisors, showing adoption of said law, held not to warrant reversal, in view of rule that time and order of introduction of evidence rests largely in the discretion of the trial court.

Error to Circuit Court, Rockbridge County.

S. H. Burks and others were convicted and fined by a justice of the peace, under separate warrants charging them with a violation of the fish and game laws of the state. Upon appeal to the circuit court all the cases were by agreement tried together, and the defendants were again found guilty, and they bring error. Affirmed.

H. S. Rucker, of Buena Vista, and *Hugh A. White*, of Lexington, for plaintiffs in error.

The Attorney General, for the Commonwealth.

BOWEN *v.* COMMONWEALTH.

Nov. 20, 1919.

[101 S. E. 232.]

1. Domicile (§§ 1, 8*)—Necessity of Domicile.—Every person must have a domicile, and but one; and this domicile, whether it be of origin or choice, is presumed to continue until a new one is obtained.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 113.]

2. Domicile (§ 4 (2)*)—Intent in Change of Domicile.—In order to acquire a new domicile, there must be a union of intention and residence, the new domicile not being acquired until there is not only an abandonment of the old residence, but a fixed intention to establish a new residence, followed by execution of the intent.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 113, 114.]

3. Domicile (§ 10*)—Intent to Be Inferred from Declarations and Conduct.—Intent, as regards domicile, is to be inferred from declarations and from conduct, and evidence of expressed intent has no controlling weight if such intent is inconsistent with the acts and general conduct of the person, in which case the acts and conduct showing intent outweigh his declarations or expressions of intent.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 113, 116.]

4. Taxation (§ 254*)—Residence of Taxpayer.—Where owner in 1905 purchased a farm in Virginia, spent a large part of his fortune in buying and improving farm, moved his furniture, which had there-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.